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OFFICE OF PETITIONS

In re Patent No. 7,094,874	:	DECISION ON REQUEST
Peach et al.	:	FOR RECONSIDERATION OF
Issue Date: August 22, 2006	:	DECISION ON
Application No. 09/865,321	:	REQUEST FOR
Filed: May 23, 2001	:	RECONSIDERATION OF
Atty Docket No. D0028PNP;	:	PATENT TERM ADJUSTMENT
30436.57USU1	:	

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed April 19, 2007. Patentees request that the revised Patent Term Adjustment shown on the above captioned patent be corrected to two hundred sixty-one (261) days.

The request for reconsideration of the decision of February 21, 2007 is granted to the extent that the decision of February 21, 2007 has been reconsidered; however, the request is DISMISSED with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 180 days indicated in the decision of February 21, 2007. This decision is not a final agency action within the meaning of 5 U.S.C. 704.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On August 22, 2006, the above-identified application matured into U.S. Patent No. 7,094,874 with a revised patent term adjustment of 253 days. By decision mailed February 21, 2007, the request for reconsideration of patent term adjustment filed October 20, 2006 was granted-in-part. The patent term adjustment indicated in the patent was corrected from TWO HUNDRED FIFTY-THREE (253) days to ONE HUNDRED EIGHTY (180) days. This determination included entry of a period of reduction of 81 days pursuant to 37 C.F.R. 1.704(c)(7).

The 81-day reduction is at issue. The decision entered the reduction on the basis that the response filed October 24, 2005 included an omission as reflected by the mailing of a Notice of Non-compliant Amendment on November 14, 2005. As the further response correcting the omission was filed on January 13, 2006, a period of reduction of 81 days was entered.

On request for reconsideration, petitioner argues that this reduction is not warranted as the mere presence of improper multiple dependent claims is not non-compliance with 37 C.F.R. § 1.121, nor is it a basis for alleging that the Filing was incomplete.

Patentees' arguments have been considered but not found persuasive. 37 CFR 1.704(c)(7) provides:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

...

(7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

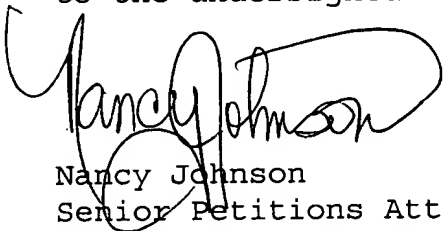
As acknowledged by patentees, the reduction under 37 CFR 1.704(c)(7) was based on applicants having filed a reply having an omission. This was evidenced by the filing of a further

paper on January 13, 2006 correcting the omission without objection. This reduction was made irrespective of whether the amendment as filed complied with 37 C.F.R. 1.121. The Notice of Non-Compliant Amendment gave notice of the omission. However, the entry of a period of reduction was made because there was an omission. Patentee has not overcome the conclusion that there was an omission within the meaning of 37 CFR 1.704(c)(7) in the response filed October 24, 2005.

Accordingly, the decision on application for patent term adjustment has been reconsidered and the reinstatement of 81 days of patent term is dismissed.

The \$200.00 fee set forth in 37 CFR 1.18(e) was submitted on request for reconsideration of patent term adjustment filed October 20, 2006. No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions